

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 08-10611
USDC No. 5:07-CV-185
USDC No. 5:05-CR-83-2

U. S. COURT OF APPEALS

FILED

APR 29 2009

UNITED STATES OF AMERICA

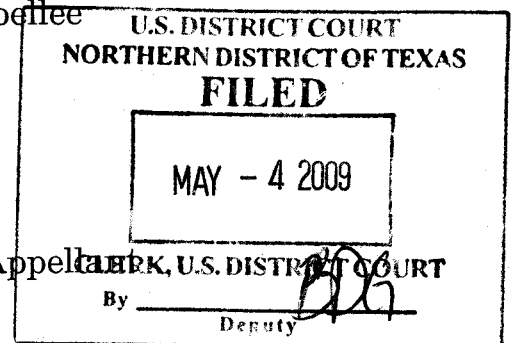
CHARLES R. FULBRUGE III
CLERK

Plaintiff-Appellee

v.

JUAN ANTHONY REYES, JR

Defendant-Appellant



Appeal from the United States District Court
for the Northern District of Texas

ORDER:

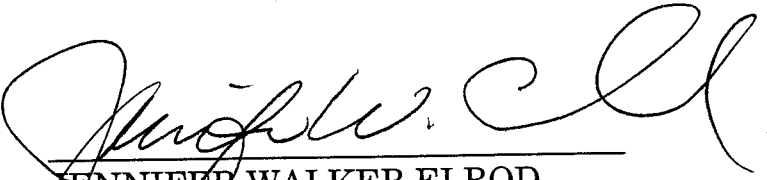
Juan Anthony Reyes, Jr., federal prisoner # 31910-177, has filed an application for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion, challenging his 2006 conviction for distribution of methamphetamine and aiding and abetting and his 235-month term of imprisonment. Reyes argues that his counsel rendered ineffective assistance in failing to investigate and object to convictions used to calculate his criminal history category and that the district court should not have denied his § 2255 motion without conducting an evidentiary hearing.

To obtain a COA, Reyes must make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). When, as here, a district court

has rejected constitutional claims on their merits, a COA will be granted only if the applicant "demonstrate[s] that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Reyes's argument that counsel rendered ineffective assistance in failing to investigate and object to convictions used to calculate his criminal history category is raised for the first time in his application for a COA in this court. This court generally will not consider issues raised for the first time in a COA application. *Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003). Reyes has waived the remaining claims raised in the district court by failing to brief them. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). Reyes has not made a substantial showing of the denial of a constitutional right. *See* § 2253(c)(2).

Accordingly, Reyes's application for a COA is DENIED.


JENNIFER WALKER ELROD
UNITED STATES CIRCUIT JUDGE